

**PROCUREMENT AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: David G. Buxton

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**LONG TITLE****General Description:**

This bill modifies provisions related to procurement.

**Highlighted Provisions:**

This bill:

▶ includes the Utah Communications Authority as a procurement unit and establishes the Utah Communications Authority Board as the applicable rulemaking authority;

▶ modifies definitions;

▶ modifies provisions relating to procurement units with independent procurement authority;

▶ modifies exemptions from the procurement code;

▶ modifies provisions relating to the number of members of an evaluation committee;

▶ modifies provisions relating to an approved vendor list;

▶ modifies a provision relating to small purchases;

▶ modifies provisions relating to the opening of bids;

▶ modifies provisions relating to a justification statement and a cost-benefit analysis;

▶ modifies provisions relating to a trial use contract;

▶ modifies provisions relating to purchases from the Division of Correctional Industries;

▶ modifies a provision relating to agreements or purchases between public entities;

and



► modifies the procurement authority of the executive director of the Department of Transportation.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****AMENDS:**

**63G-6a-103**, as last amended by Laws of Utah 2017, Chapters 181, 348, 376, 382, 463 and last amended by Coordination Clause, Laws of Utah 2017, Chapter 382

**63G-6a-106**, as last amended by Laws of Utah 2016, Chapter 355

**63G-6a-107**, as last amended by Laws of Utah 2016, Chapter 355

**63G-6a-109**, as last amended by Laws of Utah 2016, Chapter 355

**63G-6a-410**, as last amended by Laws of Utah 2017, Chapter 348

**63G-6a-506**, as last amended by Laws of Utah 2017, Chapter 348

**63G-6a-507**, as last amended by Laws of Utah 2017, Chapter 348

**63G-6a-604**, as last amended by Laws of Utah 2016, Chapter 355

**63G-6a-707**, as last amended by Laws of Utah 2017, Chapters 154, 348, and 376

**63G-6a-708**, as last amended by Laws of Utah 2016, Chapter 355

**63G-6a-802**, as last amended by Laws of Utah 2016, Chapter 355

**63G-6a-802.3**, as enacted by Laws of Utah 2016, Chapter 355

**63G-6a-804**, as last amended by Laws of Utah 2013, Chapter 445

**63G-6a-2002**, as last amended by Laws of Utah 2016, Chapter 355

**63G-6a-2102**, as last amended by Laws of Utah 2013, Chapter 445

**63G-6a-2103**, as last amended by Laws of Utah 2014, Chapter 196

**72-1-202**, as last amended by Laws of Utah 2013, Chapter 78

**ENACTS:**

**63G-6a-708.5**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **63G-6a-103** is amended to read:

**63G-6a-103. Definitions.**

As used in this chapter:

(1) "Applicable rulemaking authority" means:

(a) for a legislative procurement unit, the Legislative Management Committee;

(b) for a judicial procurement unit, the Judicial Council;

(c) (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:

(A) for the building board or the Division of Facilities Construction and Management, created in Section 63A-5-201, the building board;

(B) for the Office of the Attorney General, the attorney general; and

(C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation; and

(ii) for each other executive branch procurement unit, the board;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) an individual or body designated by the legislative body of the local government procurement unit;

(e) for a school district or a public school, the board, except to the extent of a school district's own nonadministrative rules that do not conflict with the provisions of this chapter;

(f) for a state institution of higher education described in:

(i) Subsections 53B-1-102(1)(a) and (c), the State Board of Regents; or

(ii) Subsection 53B-1-102(1)(b), the Utah System of Technical Colleges Board of Trustees;

(g) for the State Board of Education, the State Board of Education;

(h) for a public transit district, the chief executive of the public transit district;

(i) for a local district other than a public transit district or for a special service district:

(i) before January 1, 2015, the board of trustees of the local district or the governing body of the special service district; or

(ii) on or after January 1, 2015, the board, except to the extent that the board of trustees of the local district or the governing body of the special service district makes its own rules:

(A) with respect to a subject addressed by board rules; or

(B) that are in addition to board rules; [~~or~~]

(j) for the Utah Communications Authority, established in Section [63H-7a-201](#), the Utah Communications Authority Board, created in Section [63H-7a-203](#); or

~~[(j)]~~ (k) for any other procurement unit, the board.

(2) "Approved vendor" means a vendor who has been approved through the approved vendor list process.

(3) "Approved vendor list" means a list of approved vendors established under Section [63G-6a-507](#).

(4) "Approved vendor list process" means the procurement process described in Section [63G-6a-507](#).

(5) "Bidder" means a person who submits a bid or price quote in response to an invitation for bids.

(6) "Bidding process" means the procurement process described in Part 6, Bidding.

(7) "Board" means the Utah State Procurement Policy Board, created in Section [63G-6a-202](#).

(8) "Building board" means the State Building Board, created in Section [63A-5-101](#).

(9) "Change directive" means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.

(10) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.

(11) "Chief procurement officer" means the chief procurement officer appointed under Subsection [63G-6a-302](#)(1).

(12) "Conducting procurement unit" means a procurement unit that conducts all aspects of a procurement:

(a) except:

(i) reviewing a solicitation to verify that it is in proper form; and

(ii) causing the publication of a notice of a solicitation; and

(b) including:

(i) preparing any solicitation document;

- 121 (ii) appointing an evaluation committee;
- 122 (iii) conducting the evaluation process, except as provided in Subsection
- 123 63G-6a-707(6)(b) relating to scores calculated for costs of proposals;
- 124 (iv) selecting and recommending the person to be awarded a contract;
- 125 (v) negotiating the terms and conditions of a contract, subject to the issuing
- 126 procurement unit's approval; and
- 127 (vi) contract administration.
- 128 (13) "Conservation district" means the same as that term is defined in Section
- 129 17D-3-102.
- 130 (14) "Construction":
- 131 (a) means services, including work, and supplies for a project for the construction,
- 132 renovation, alteration, improvement, or repair of a public facility on real property; and
- 133 (b) does not include services and supplies for the routine, day-to-day operation, repair,
- 134 or maintenance of an existing public facility.
- 135 (15) "Construction manager/general contractor":
- 136 (a) means a contractor who enters into a contract:
- 137 (i) for the management of a construction project; and
- 138 (ii) that allows the contractor to subcontract for additional labor and materials that are
- 139 not included in the contractor's cost proposal submitted at the time of the procurement of the
- 140 contractor's services; and
- 141 (b) does not include a contractor whose only subcontract work not included in the
- 142 contractor's cost proposal submitted as part of the procurement of the contractor's services is to
- 143 meet subcontracted portions of change orders approved within the scope of the project.
- 144 (16) "Construction subcontractor":
- 145 (a) means a person under contract with a contractor or another subcontractor to provide
- 146 services or labor for the design or construction of a construction project;
- 147 (b) includes a general contractor or specialty contractor licensed or exempt from
- 148 licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and
- 149 (c) does not include a supplier who provides only materials, equipment, or supplies to a
- 150 contractor or subcontractor for a construction project.
- 151 (17) "Contract" means an agreement for a procurement.

(18) "Contract administration" means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:

- (a) implementing the contract;
- (b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;
- (c) executing change orders;
- (d) processing contract amendments;
- (e) resolving, to the extent practicable, contract disputes;
- (f) curing contract errors and deficiencies;
- (g) terminating a contract;
- (h) measuring or evaluating completed work and contractor performance;
- (i) computing payments under the contract; and
- (j) closing out a contract.

(19) "Contractor" means a person who is awarded a contract with a procurement unit.

(20) "Cooperative procurement" means procurement conducted by, or on behalf of:

- (a) more than one procurement unit; or
- (b) a procurement unit and a cooperative purchasing organization.

(21) "Cooperative purchasing organization" means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).

(22) "Cost-plus-a-percentage-of-cost contract" means a contract under which the contractor is paid a percentage of the total actual expenses or costs in addition to the contractor's actual expenses or costs.

(23) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(24) "Days" means calendar days, unless expressly provided otherwise.

(25) "Definite quantity contract" means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.

(26) "Design-build" means the procurement of design professional services and construction by the use of a single contract.

(27) "Design professional" means:

(a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act; or

(b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(28) "Design professional procurement process" means the procurement process described in Part 15, Design Professional Services.

(29) "Design professional services" means:

(a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;

(b) professional engineering as defined in Section 58-22-102; or

(c) master planning and programming services.

(30) "Director" means the director of the division.

(31) "Division" means the Division of Purchasing and General Services, created in Section 63A-2-101.

(32) "Educational procurement unit" means:

(a) a school district;

(b) a public school, including a local school board or a charter school;

(c) the Utah Schools for the Deaf and Blind;

(d) the Utah Education and Telehealth Network;

(e) an institution of higher education of the state described in Section 53B-1-102; or

(f) the State Board of Education.

(33) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or

214 services involved.

215 (34) "Executive branch procurement unit" means a department, division, office,  
216 bureau, agency, or other organization within the state executive branch.

217 (35) "Fixed price contract" means a contract that provides a price, for each  
218 procurement item obtained under the contract, that is not subject to adjustment except to the  
219 extent that:

220 (a) the contract provides, under circumstances specified in the contract, for an  
221 adjustment in price that is not based on cost to the contractor; or

222 (b) an adjustment is required by law.

223 (36) "Fixed price contract with price adjustment" means a fixed price contract that  
224 provides for an upward or downward revision of price, precisely described in the contract, that:

225 (a) is based on the consumer price index or another commercially acceptable index,  
226 source, or formula; and

227 (b) is not based on a percentage of the cost to the contractor.

228 (37) "Grant" means an expenditure of public funds or other assistance, or an agreement  
229 to expend public funds or other assistance, for a public purpose authorized by law, without  
230 acquiring a procurement item in exchange.

231 (38) "Head of a procurement unit" means:

232 (a) for a legislative procurement unit, any person designated by rule made by the  
233 applicable rulemaking authority;

234 (b) for an executive branch procurement unit:

235 (i) the director of the division; or

236 (ii) any other person designated by the board, by rule;

237 (c) for a judicial procurement unit:

238 (i) the Judicial Council; or

239 (ii) any other person designated by the Judicial Council, by rule;

240 (d) for a local government procurement unit:

241 (i) the legislative body of the local government procurement unit; or

242 (ii) any other person designated by the local government procurement unit;

243 (e) for a local district other than a public transit district, the board of trustees of the  
244 local district or a designee of the board of trustees;



(f) for a special service district, the governing body of the special service district or a designee of the governing body;

(g) for a local building authority, the board of directors of the local building authority or a designee of the board of directors;

(h) for a conservation district, the board of supervisors of the conservation district or a designee of the board of supervisors;

(i) for a public corporation, the board of directors of the public corporation or a designee of the board of directors;

(j) for a school district or any school or entity within a school district, the board of the school district, or the board's designee;

(k) for a charter school, the individual or body with executive authority over the charter school, or the individual's or body's designee;

(l) for an institution of higher education described in Section 53B-2-101, the president of the institution of higher education, or the president's designee;

(m) for a public transit district, the board of trustees or a designee of the board of trustees; or

(n) for the State Board of Education, the State Board of Education or a designee of the State Board of Education.

(39) "Immaterial error":

(a) means an irregularity or abnormality that is:

(i) a matter of form that does not affect substance; or

(ii) an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other vendors; and

(b) includes:

(i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;

(ii) a typographical error;

(iii) an error resulting from an inaccuracy or omission in the solicitation; and

(iv) any other error that the chief procurement officer or the head of a procurement unit with independent procurement authority reasonably considers to be immaterial.

(40) "Indefinite quantity contract" means a fixed price contract that:

- 276 (a) is for an indefinite amount of procurement items to be supplied as ordered by a  
277 procurement unit; and
- 278 (b) (i) does not require a minimum purchase amount; or  
279 (ii) provides a maximum purchase limit.
- 280 (41) "Independent procurement authority" means authority granted to a procurement  
281 unit under Subsection 63G-6a-106(4)(a).
- 282 (42) "Invitation for bids":  
283 (a) means a document used to solicit:  
284 (i) bids to provide a procurement item to a procurement unit; or  
285 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and  
286 (b) includes all documents attached to or incorporated by reference in a document  
287 described in Subsection (42)(a).
- 288 (43) "Issuing procurement unit" means a procurement unit that:  
289 (a) reviews a solicitation to verify that it is in proper form;  
290 (b) causes the notice of a solicitation to be published; and  
291 (c) negotiates and approves the terms and conditions of a contract.
- 292 (44) "Judicial procurement unit" means:  
293 (a) the Utah Supreme Court;  
294 (b) the Utah Court of Appeals;  
295 (c) the Judicial Council;  
296 (d) a state judicial district; or  
297 (e) an office, committee, subcommittee, or other organization within the state judicial  
298 branch.
- 299 (45) "Labor hour contract" is a contract under which:  
300 (a) the supplies and materials are not provided by, or through, the contractor; and  
301 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and  
302 profit for a specified number of labor hours or days.
- 303 (46) "Legislative procurement unit" means:  
304 (a) the Legislature;  
305 (b) the Senate;  
306 (c) the House of Representatives;

(d) a staff office of the Legislature, the Senate, or the House of Representatives; or  
(e) a committee, subcommittee, commission, or other organization:  
(i) within the state legislative branch; or  
(ii) (A) that is created by statute to advise or make recommendations to the Legislature;  
(B) the membership of which includes legislators; and  
(C) for which the Office of Legislative Research and General Counsel provides staff support.

(47) "Local building authority" means the same as that term is defined in Section 17D-2-102.

(48) "Local district" means the same as that term is defined in Section 17B-1-102.

(49) "Local government procurement unit" means:

(a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;

(b) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; or

(c) a county or municipality that has adopted a portion of this chapter by ordinance, to the extent that a term in the ordinance is used in the adopted portion of this chapter, and each office or agency of that county or municipality.

(50) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one person.

(51) "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.

(52) "Municipality" means a city, town, or metro township.

(53) "Nonadopting local government procurement unit" means:

(a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19, General Provisions Related to Protest or Appeal; and

(b) each office or agency of a county or municipality described in Subsection (53)(a).

(54) "Offeror" means a person who submits a proposal in response to a request for proposals.

(55) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

(56) "Procure" means to acquire a procurement item through a procurement.

(57) "Procurement" ~~[(a) means a procurement unit's]~~ means the acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds, including an acquisition through a public-private partnership~~;~~.

~~[(b) includes all functions that pertain to the acquisition of a procurement item, including:]~~

~~[(i) preparing and issuing a solicitation; and]~~

~~[(ii) (A) conducting a standard procurement process; or]~~

~~[(B) conducting a procurement process that is an exception to a standard procurement process under Part 8, Exceptions to Procurement Requirements; and]~~

~~[(c) does not include a grant.]~~

(58) "Procurement item" means a supply, a service, or construction.

(59) "Procurement officer" means:

(a) for a procurement unit with independent procurement authority:

(i) the head of the procurement unit;

(ii) a designee of the head of the procurement unit; or

(iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for the division or a procurement unit without independent procurement authority, the chief procurement officer.

(60) "Procurement unit":

(a) means:

(i) a legislative procurement unit;

(ii) an executive branch procurement unit;

(iii) a judicial procurement unit;

(iv) an educational procurement unit;

(v) the Utah Communications Authority, established in Section [63H-7a-201](#);

~~[(v)]~~ (vi) a local government procurement unit;

~~[(vi)]~~ (vii) a local district;

~~[(vii)]~~ (viii) a special service district;

369           ~~[(viii)]~~ (ix) a local building authority;  
370           ~~[(ix)]~~ (x) a conservation district;  
371           ~~[(x)]~~ (xi) a public corporation; or  
372           ~~[(xi)]~~ (xii) a public transit district; and  
373           (b) does not include a political subdivision created under Title 11, Chapter 13,  
374 Interlocal Cooperation Act.  
375           (61) "Professional service" means labor, effort, or work that requires an elevated  
376 degree of specialized knowledge and discretion, including labor, effort, or work in the field of:  
377           (a) accounting;  
378           (b) administrative law judge service;  
379           (c) architecture;  
380           (d) construction design and management;  
381           (e) engineering;  
382           (f) financial services;  
383           (g) information technology;  
384           (h) the law;  
385           (i) medicine;  
386           (j) psychiatry; or  
387           (k) underwriting.  
388           (62) "Protest officer" means:  
389           (a) for the division or a procurement unit with independent procurement authority:  
390           (i) the head of the procurement unit;  
391           (ii) the head of the procurement unit's designee who is an employee of the procurement  
392 unit; or  
393           (iii) a person designated by rule made by the applicable rulemaking authority; or  
394           (b) for a procurement unit without independent procurement authority, the chief  
395 procurement officer or the chief procurement officer's designee who is an employee of the  
396 division.  
397           (63) "Public corporation" means the same as that term is defined in Section [63E-1-102](#).  
398           (64) "Public entity" means any government entity ~~[of the state or political subdivision~~  
399 ~~of the state, including:]~~ that expends public funds.

400 ~~[(a) a procurement unit;]~~

401 ~~[(b) a municipality or county, regardless of whether the municipality or county has~~  
402 ~~adopted this chapter or any part of this chapter; and]~~

403 ~~[(c) any other government entity located in the state that expends public funds.]~~

404 (65) "Public facility" means a building, structure, infrastructure, improvement, or other  
405 facility of a public entity.

406 (66) "Public funds" means money, regardless of its source, including from the federal  
407 government, that is owned or held by a procurement unit.

408 (67) "Public-private partnership" means an arrangement or agreement, occurring on or  
409 after January 1, 2017, between a procurement unit and one or more contractors to provide for a  
410 public need through the development or operation of a project in which the contractor or  
411 contractors share with the procurement unit the responsibility or risk of developing, owning,  
412 maintaining, financing, or operating the project.

413 (68) "Public transit district" means a public transit district organized under Title 17B,  
414 Chapter 2a, Part 8, Public Transit District Act.

415 (69) "Qualified vendor" means a vendor who:

416 (a) is responsible; and

417 (b) submits a responsive statement of qualifications under Section 63G-6a-410 that  
418 meets the minimum mandatory requirements, evaluation criteria, and any applicable score  
419 thresholds set forth in the request for statement of qualifications.

420 (70) "Real property" means land and any building, fixture, improvement, appurtenance,  
421 structure, or other development that is permanently affixed to land.

422 (71) "Request for information" means a nonbinding process through which a  
423 procurement unit requests information relating to a procurement item.

424 (72) "Request for proposals" means a document used to solicit proposals to provide a  
425 procurement item to a procurement unit, including all other documents that are attached to that  
426 document or incorporated in that document by reference.

427 (73) "Request for proposals process" means the procurement process described in Part  
428 7, Request for Proposals.

429 (74) "Request for statement of qualifications" means a document used to solicit  
430 information about the qualifications of a person interested in responding to a potential

procurement, including all other documents attached to that document or incorporated in that document by reference.

(75) "Requirements contract" means a contract:

(a) under which a contractor agrees to provide a procurement unit's entire requirements for certain procurement items at prices specified in the contract during the contract period; and

(b) that:

(i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

(76) "Responsible" means being capable, in all respects, of:

(a) meeting all the requirements of a solicitation; and

(b) fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.

(77) "Responsive" means conforming in all material respects to the requirements of a solicitation.

(78) "Sealed" means manually or electronically secured to prevent disclosure.

(79) "Service":

(a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;

(b) includes a professional service; and

(c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.

(80) "Small purchase process" means the procurement process described in Section 63G-6a-506.

(81) "Sole source contract" means a contract resulting from a sole source procurement.

(82) "Sole source procurement" means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the procurement item.

~~[(83) "Solicitation" means an invitation for bids, request for proposals, request for statement of qualifications, or request for information.]~~

(83) "Solicitation" means a document or set of documents by which a procurement unit using a standard procurement process solicits responses.

(84) "Solicitation response" means[+] a proposal submitted in response to a solicitation.  
~~[(a) a bid submitted in response to an invitation for bids;]~~  
~~[(b) a proposal submitted in response to a request for proposals; or]~~  
~~[(c) a statement of qualifications submitted in response to a request for statement of qualifications.]~~

(85) "Special service district" means the same as that term is defined in Section 17D-1-102.

(86) "Specification" means any description of the physical or functional characteristics or of the nature of a procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

- (a) a requirement for inspecting or testing a procurement item; or
- (b) preparing a procurement item for delivery.

(87) "Standard procurement process" means:

- (a) the bidding process;
- (b) the request for proposals process;
- (c) the approved vendor list process;
- (d) the small purchase process; or
- (e) the design professional procurement process.

(88) "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.

(89) "Statement of qualifications" means a written statement submitted to a procurement unit in response to a request for statement of qualifications.

(90) "Subcontractor":

(a) means a person under contract to perform part of a contractual obligation under the control of the contractor, whether the person's contract is with the contractor directly or with another person who is under contract to perform part of a contractual obligation under the control of the contractor; and

(b) includes a supplier, distributor, or other vendor that furnishes supplies or services to a contractor.

(91) "Supply" means a good, material, technology, piece of equipment, or any other item of personal property.



493 (92) "Tie bid" means that the lowest responsive bids of responsible bidders are  
494 identical in price.

495 (93) "Time and materials contract" means a contract under which the contractor is paid:

496 (a) the actual cost of direct labor at specified hourly rates;

497 (b) the actual cost of materials and equipment usage; and

498 (c) an additional amount, expressly described in the contract, to cover overhead and  
499 profit, that is not based on a percentage of the cost to the contractor.

500 (94) "Transitional costs":

501 (a) means the costs of changing:

502 (i) from an existing provider of a procurement item to another provider of that  
503 procurement item; or

504 (ii) from an existing type of procurement item to another type;

505 (b) includes:

506 (i) training costs;

507 (ii) conversion costs;

508 (iii) compatibility costs;

509 (iv) costs associated with system downtime;

510 (v) disruption of service costs;

511 (vi) staff time necessary to implement the change;

512 (vii) installation costs; and

513 (viii) ancillary software, hardware, equipment, or construction costs; and

514 (c) does not include:

515 (i) the costs of preparing for or engaging in a procurement process; or

516 (ii) contract negotiation or drafting costs.

517 ~~[(95) "Trial use contract" means a contract for a procurement item that the procurement~~  
518 ~~unit acquires for a trial use or testing to determine whether the procurement item will benefit~~  
519 ~~the procurement unit.]~~

520 ~~[(96)]~~ (95) "Vendor":

521 (a) means a person who is seeking to enter into a contract with a procurement unit to  
522 provide a procurement item; and

523 (b) includes:

- (i) a bidder;
- (ii) an offeror;
- (iii) an approved vendor; and
- (iv) a design professional.

Section 2. Section **63G-6a-106** is amended to read:

**63G-6a-106. Procurement units with specific statutory procurement authority -- Independent procurement authority -- Authority of head of a procurement unit with independent procurement authority.**

(1) A procurement unit with procurement authority under the following provisions has independent procurement authority to the extent of the applicable provisions and for the procurement items specified in the applicable provisions:

~~[(a) Title 53B, State System of Higher Education;]~~

~~[(b)]~~ (a) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management;

~~[(c)]~~ (b) Title 67, Chapter 5, Attorney General;

~~[(d)]~~ (c) Title 72, Transportation Code; and

~~[(e)]~~ (d) Title 78A, Chapter 5, District Court.

(2) Except as otherwise provided in Sections **63G-6a-105** and **63G-6a-107**, a procurement unit shall conduct a procurement in accordance with this chapter.

(3) (a) The Department of Transportation may make rules governing the procurement of highway construction or improvement.

(b) The applicable rulemaking authority for a public transit district may make rules governing the procurement of a transit construction project or a transit improvement project.

(4) (a) A procurement unit listed in Subsection (4)(b) may, without the supervision, interference, oversight, control, or involvement of the division or the chief procurement officer, but in accordance with the requirements of this chapter:

(i) engage in a standard procurement process;

(ii) procure an item under an exception, as provided in this chapter, to the requirement to use a standard procurement process; or

(iii) otherwise engage in an act authorized or required by this chapter.

(b) The procurement units to which Subsection (4)(a) applies are:

- 555 (i) a legislative procurement unit;  
556 (ii) a judicial procurement unit;  
557 (iii) an educational procurement unit;  
558 (iv) a local government procurement unit;  
559 (v) a conservation district;  
560 (vi) a local building authority;  
561 (vii) a local district;  
562 (viii) a public corporation;  
563 (ix) a special service district;  
564 (x) a public transit district; and  
565 (xi) a procurement unit referred to in Subsection (1), to the extent authorized in  
566 Subsection (1).
- 567 (c) A procurement unit with independent procurement authority shall comply with the  
568 requirements of this chapter.
- 569 (d) Notwithstanding Subsection (4)(a), a procurement unit with independent  
570 procurement authority may agree in writing with the division to extend the authority of the  
571 division or the chief procurement officer to the procurement unit, as provided in the agreement.
- 572 (e) With respect to a procurement or contract over which the head of a procurement  
573 unit with independent procurement authority has authority, the head of the procurement unit  
574 with independent procurement authority may:
- 575 (i) manage and supervise the procurement to ensure to the extent practicable that  
576 taxpayers receive the best value;
- 577 (ii) prepare and issue standard specifications for procurement items;
- 578 (iii) review contracts, coordinate contract compliance, conduct contract audits, and  
579 approve change orders;
- 580 (iv) delegate duties and authority to an employee of the procurement unit, as the head  
581 of the procurement unit with independent procurement authority considers appropriate;
- 582 (v) for the head of an executive branch procurement unit with independent  
583 procurement authority, coordinate with the Department of Technology Services, created in  
584 Section [63F-1-103](#), with respect to the procurement unit's procurement of information  
585 technology services;

(vi) correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with this chapter or a rule adopted by the applicable rulemaking authority; and

~~[(vii) after consultation with, as applicable, the attorney general's office or the procurement unit's legal counsel, correct, amend, or cancel a contract at any time during the term of the contract if:]~~

~~[(A) the contract is out of compliance with this chapter or a board rule; and]~~

~~[(B) the head of the procurement unit with independent procurement authority determines that correcting, amending, or canceling the contract is in the best interest of the procurement unit; and]~~

~~[(viii)]~~ (vii) attempt to resolve a contract dispute in coordination with the legal counsel of the procurement unit with independent procurement authority.

(f) The head of a procurement unit with independent procurement authority serves as the protest officer for a protest involving the procurement unit.

(g) If, at any time during the term of a contract awarded by a procurement unit with independent procurement authority, the head of the procurement unit determines that the contract is out of compliance with this chapter or applicable rules, the head of the procurement unit may correct or amend the contract to bring it into compliance or cancel the contract:

(i) if the head of the procurement unit determines that correcting, amending, or canceling the contract is in the best interest of the procurement unit; and

(ii) after consulting with, as applicable, the attorney general's office or the procurement unit's legal counsel.

(5) (a) The attorney general may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer:

(i) retain outside counsel, subject to Section 67-5-33 if the attorney general retains outside counsel under a contingent fee contract, as defined in that section; or

(ii) procure litigation support services, including retaining an expert witness.

(b) A procurement unit with independent procurement authority that is not represented by the attorney general's office may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer:

(i) retain outside counsel; or

(ii) procure litigation support services, including retaining an expert witness.

(6) The state auditor's office may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer, procure audit services.

(7) The state treasurer may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer, procure:

(a) deposit services; and

(b) services related to issuing bonds.

Section 3. Section **63G-6a-107** is amended to read:

**63G-6a-107. Exemptions from chapter -- Compliance with other provisions.**

(1) Except for Part 24, Unlawful Conduct and Penalties, this chapter does not apply to:

(a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art Act;

(b) a grant;

~~[(c) a contract between procurement units;]~~

~~[(d)]~~ (c) medical supplies or medical equipment, including service agreements for medical equipment, obtained by the University of Utah Hospital through a purchasing consortium if:

(i) the consortium uses a competitive procurement process; and

(ii) the chief administrative officer of the hospital makes a written finding that the prices for purchasing medical supplies and medical equipment through the consortium are competitive with market prices;

~~[(e)]~~ (d) the purchase of firefighting supplies or equipment by the Division of Forestry, Fire, and State Lands, created in Section [65A-1-4](#), through the federal General Services Administration or the National Fire Cache system;

~~[(f)]~~ (e) supplies purchased for resale to the public; ~~[or]~~

~~[(g)]~~ (f) activities related to the management of investments by a public entity granted investment authority by law~~[-]; or~~

(g) a procurement from the Internet2 consortium, if the procurement is of a technology specific to the needs of:

(i) an institution of higher education identified in Subsection [53B-1-102\(1\)\(a\)](#); or

(ii) the Utah Education and Telehealth Network, created in Section [53B-17-105](#).

(2) Notwithstanding any conflicting provision of this chapter, if a procurement involves the expenditure of federal or state assistance, federal contract funds, local matching funds, or federal financial participation funds, the procurement unit shall comply with mandatory applicable federal or state law and regulations not reflected in this chapter.

(3) This chapter does not supersede the requirements for retention or withholding of construction proceeds and release of construction proceeds as provided in Section 13-8-5.

(4) This chapter does not apply to a procurement unit's hiring a mediator, arbitrator, or arbitration panel member to participate in the procurement unit's dispute resolution efforts.

Section 4. Section **63G-6a-109** is amended to read:

**63G-6a-109. Issuing procurement unit and conducting procurement unit.**

(1) With respect to a procurement by an executive branch procurement unit:

(a) except as provided in Section 63G-6a-106, the division is the issuing procurement unit; and

(b) the executive branch procurement unit is the conducting procurement unit and is responsible to ensure that the procurement is conducted in compliance with this chapter.

(2) With respect to a procurement by any other procurement unit, the procurement unit is both the issuing procurement unit and the conducting procurement unit.

(3) A conducting procurement unit is responsible for contract administration.

Section 5. Section **63G-6a-410** is amended to read:

**63G-6a-410. Request for statement of qualifications -- Process.**

(1) (a) A procurement unit may use the process described in this section:

(i) as one of the stages of a multiple-stage[:] standard procurement process; and

~~[(A) bidding process;]~~

~~[(B) request for proposals process; or]~~

~~[(C) design professional procurement process; and]~~

(ii) to identify qualified vendors to participate in other stages of the multiple-stage procurement process.

(b) A procurement unit shall use the process described in this section as part of the approved vendor list process, if the procurement unit intends to establish an approved vendor list.

(2) A procurement unit may not:

(a) award a contract based solely on the process described in this section; or  
(b) solicit costs, pricing, or rates or negotiate fees through the process described in this section.

(3) The process of identifying qualified vendors in a multiple-stage standard procurement process or of establishing an approved vendor list under Section 63G-6a-507 is initiated by a procurement unit issuing a request for statement of qualifications.

(4) A request for statement of qualifications in a multiple-stage standard procurement process shall include:

(a) a statement indicating that participation in other stages of the multiple-stage standard procurement process will be limited to qualified vendors;

(b) the minimum mandatory requirements, evaluation criteria, and applicable score thresholds that will be used to identify qualified vendors, including, as applicable:

(i) experience and work history;

(ii) management and staff requirements or standards;

(iii) licenses, certifications, and other qualifications;

(iv) performance ratings or references;

(v) financial stability; and

(vi) other information pertaining to vendor qualifications that the chief procurement officer or the head of a procurement unit with independent procurement authority considers relevant or important; and

(c) the deadline by which a vendor is required to submit a statement of qualifications.

(5) A request for statement of qualifications in an approved vendor list process under Section 63G-6a-507 shall include:

(a) a general description of, as applicable:

(i) the procurement item that the procurement unit seeks to acquire;

(ii) the type of project or scope or category of work that will be the subject of a procurement by the procurement unit;

(iii) the procurement process the procurement unit will use to acquire the procurement item; and

(iv) the type of vendor the procurement unit seeks to provide the procurement item;

(b) the minimum mandatory requirements, evaluation criteria, and applicable score

thresholds that vendors are required to meet to be included on the approved vendor list;

(c) a statement indicating that the approved vendor list will include only responsible vendors that:

(i) submit a responsive statement of qualifications; and

(ii) meet the minimum mandatory requirements, evaluation criteria, and applicable score thresholds described in the request for statement of qualifications;

(d) a statement indicating that only vendors on the approved vendor list will be able to participate in the procurements identified in the request for statement of qualifications;

(e) a statement indicating whether the procurement unit will use a performance rating system for evaluating the performance of vendors on the approved vendor list, including whether a vendor on the approved vendor list may be disqualified and removed from the list;

(f) (i) a statement indicating whether the procurement unit uses a closed-ended approved vendor list, as defined in Section 63G-6a-507, or an open-ended approved vendor list, as defined in Section 63G-6a-507; and

(ii) (A) if the procurement unit uses a closed-ended approved vendor list, the deadline by which a vendor is required to submit a statement of qualifications and a specified period of time after which the approved vendor list will expire; or

(B) if the procurement unit uses an open-ended approved vendor list, the deadline by which a vendor is required to submit a statement of qualifications to be considered for the initial approved vendor list, a schedule indicating when a vendor not on the initial approved vendor list may submit a statement of qualifications to be considered to be added to the approved vendor list, and the specified period of time after which a vendor is required to submit a new statement of qualifications for evaluation before the vendor's status as an approved vendor on the approved vendor list may be renewed; and

(g) a description of any other criteria or requirements specific to the procurement item or scope of work that is the subject of the procurement.

(6) A procurement unit issuing a request for statement of qualifications shall publish the request as provided in Section 63G-6a-112.

(7) After the deadline for submitting a statement of qualifications, the chief procurement officer or the head of a procurement unit with independent procurement authority may allow a vendor to correct an immaterial error in a statement of qualifications, as provided



in Section 63G-6a-114.

(8) (a) A conducting procurement unit may reject a statement of qualifications if the conducting procurement unit determines that:

(i) the vendor who submitted the statement of qualifications:

(A) is not responsible;

(B) is in violation of a provision of this chapter;

(C) has engaged in unethical conduct; or

(D) receives a performance rating below the satisfactory performance threshold specified in the request for statement of qualifications;

(ii) there has been a change in the vendor's circumstances after the vendor submits a statement of qualifications that, if the change had been known at the time the statement of qualifications was evaluated, would have caused the statement of qualifications not to have received a qualifying score; or

(iii) the statement of qualifications:

(A) is not responsive; or

(B) does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds stated in the request for statement of qualifications.

(b) A procurement unit that rejects a statement of qualifications under Subsection (8)(a) shall:

(i) make a written finding, stating the reasons for the rejection; and

(ii) provide a copy of the written finding to the vendor that submitted the rejected statement of qualifications.

(9) (a) (i) After the issuance of a request for statement of qualifications, the conducting procurement unit shall appoint an evaluation committee consisting, subject to Subsection (9)(b), of at least three individuals with at least a general familiarity with or basic understanding of:

(A) the technical requirements relating to the type of procurement item that is the subject of the request for statement of qualifications; or

(B) the need that the procurement item is intended to address.

(ii) The conducting procurement unit shall ensure that each member of an evaluation committee and each individual participating in the evaluation committee process:

(A) does not have a conflict of interest with any vendor that submits a statement of qualifications;

(B) can fairly evaluate each statement of qualifications;

(C) does not contact or communicate with a vendor concerning the evaluation process or procurement outside the official evaluation committee process; and

(D) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(b) The conducting procurement unit may reduce the number of individuals appointed to an evaluation committee if the chief procurement officer or the head of the procurement unit with independent procurement authority determines in writing that the evaluation criteria:

(i) consist of only objective criteria; and

(ii) do not include any subjective criterion that requires analysis, assessment, or deliberation.

~~[(b)]~~ (c) A conducting procurement unit may authorize an evaluation committee to receive assistance:

(i) from an expert or consultant who:

(A) is not a member of the evaluation committee; and

(B) does not participate in the evaluation scoring; and

(ii) to better understand a technical issue involved in the procurement.

~~[(c)]~~ (d) An evaluation committee appointed under this Subsection (9):

(i) shall evaluate and score statements of qualifications submitted in response to a request for statement of qualifications using the minimum mandatory requirements, evaluation criteria, and applicable score thresholds set forth in the request for statement of qualifications;

(ii) may not evaluate or score a statement of qualifications using criteria not included in the request for statement of qualifications; and

(iii) may, with the approval of the head of the conducting procurement unit, enter into discussions or conduct interviews with or attend presentations by vendors, for the purpose of clarifying information contained in statements of qualifications.

~~[(d)]~~ (e) In a discussion, interview, or presentation under Subsection (9)~~[(c)]~~(d)(iii), a vendor:

(i) may only explain, illustrate, or interpret the contents of the vendor's original

statement of qualifications; and

(ii) may not:

(A) address criteria or specifications not contained in the vendor's original statement of qualifications;

(B) correct a deficiency, inaccuracy, or mistake in a statement of qualifications that is not an immaterial error;

(C) correct an incomplete submission of documents that the request for statement of qualifications required to be submitted with the statement of qualifications;

(D) correct a failure to submit a timely statement of qualifications;

(E) substitute or alter a required form or other document specified in the statement of qualifications;

(F) remedy a cause for a vendor being considered to be not responsible or a statement of qualifications not responsive; or

(G) correct a defect or inadequacy resulting in a determination that a vendor does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the statement of qualifications.

~~[(e)]~~ (f) After the evaluation committee completes its evaluation and scoring of the statements of qualifications, the evaluation committee shall submit the statements of qualifications and evaluation scores to the head of the procurement unit for review and final determination of:

(i) qualified vendors, if the request for statement of qualifications process is used as one of the stages of a multiple-stage process; or

(ii) vendors to be included on an approved vendor list, if the request for statement of qualifications process is used as part of the approved vendor list process.

~~[(f)]~~ (g) The issuing procurement unit shall review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter.

~~[(g)]~~ (h) (i) The deliberations of an evaluation committee under this Subsection (9) may be held in private.

(ii) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.

(10) A procurement unit may at any time request a vendor to clarify information contained in a statement of qualifications, as provided in Section 63G-6a-115.

(11) A vendor may voluntarily withdraw a statement of qualifications at any time before a contract is awarded with respect to which the statement of qualifications was submitted.

(12) If only one vendor meets the minimum qualifications, evaluation criteria, and applicable score thresholds set forth in the request for statement of qualifications that the procurement unit is using as part of an approved vendor list process, the conducting procurement unit may:

(a) ~~[shall] cancel the request for statement of qualifications; [and] or~~  
~~[(b) may not establish an approved vendor list based on the canceled request for statement of qualifications or on statements of qualifications submitted in response to the request for statement of qualifications.]~~

(b) establish an approved vendor list that includes the one vendor if the conducting procurement unit continues to try to identify more vendors to be included on the approved vendor list by:

(i) keeping the request for statement of qualifications open; or  
(ii) immediately reissuing the request for statement of qualifications and repeating the process under this section.

(13) If a conducting procurement unit cancels a request for statement of qualifications, the conducting procurement unit shall make available for public inspection a written justification for the cancellation.

(14) After receiving and reviewing the statements of qualifications and evaluation scores submitted by the evaluation committee, the head of the procurement unit using the request for statement of qualifications process under this section as one of the stages of a multiple-stage procurement process shall identify those vendors meeting the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as qualified vendors who are allowed to participate in the remaining stages of the multiple-stage procurement process.

(15) The applicable rulemaking authority may make rules pertaining to the request for statement of qualifications and the process described in this section.

Section 6. Section **63G-6a-506** is amended to read:

**63G-6a-506. Small purchases.**

(1) As used in this section:

(a) "Annual cumulative threshold" means the maximum total annual amount, established by the applicable rulemaking authority under Subsection (2), that a procurement unit may expend to obtain procurement items from the same source under this section.

(b) "Individual procurement threshold" means the maximum amount, established by the applicable rulemaking authority under Subsection (2), for which a procurement unit may purchase a procurement item under this section.

(c) "Single procurement aggregate threshold" means the maximum total amount, established by the applicable rulemaking authority under Subsection (2), that a procurement unit may expend to obtain multiple procurement items from one source at one time under this section.

(2) (a) The applicable rulemaking authority may make rules governing small purchases of any procurement item, including construction, job order contracting, design professional services, other professional services, information technology, and goods.

(b) Rules under Subsection (2)(a) may include provisions:

(i) establishing expenditure thresholds, including:

(A) an annual cumulative threshold;

(B) an individual procurement threshold; and

(C) a single procurement aggregate threshold;

(ii) establishing procurement requirements relating to the thresholds described in Subsection (2)(b)(i); and

(iii) providing for the use of electronic, telephone, or written quotes.

(c) If a procurement unit obtains administrative law judge service through a small purchase standard procurement process, rules made under Subsection (2)(a) shall provide that the process for the procurement of administrative law judge service include an evaluation committee described in Subsection **63G-6a-116(3)**.

(3) Expenditures made under this section by a procurement unit may not exceed a threshold established by the applicable rulemaking authority, unless the chief procurement officer or the head of a procurement unit with independent procurement authority gives written

authorization to exceed the threshold that includes the reasons for exceeding the threshold.

(4) Except as provided in Subsection (5), an executive branch procurement unit may not obtain a procurement item through a small purchase standard procurement process if the procurement item may be obtained through a state cooperative contract or a contract awarded by the chief procurement officer under Subsection 63G-6a-2105(1).

(5) Subsection (4) does not apply if:

(a) the procurement item is obtained for an unanticipated, urgent, or emergency condition, including:

(i) an item needed to avoid stopping a public construction project;

(ii) an immediate repair to a facility or equipment; or

(iii) another emergency condition; or

(b) the chief procurement officer or the head of a procurement unit that is an executive branch procurement unit with independent procurement authority:

(i) determines in writing that it is in the best interest of the procurement unit to obtain an individual procurement item outside of the state contract, comparing:

(A) the contract terms and conditions applicable to the procurement item under the state contract with the contract terms and conditions applicable to the procurement item if the procurement item is obtained outside of the state contract;

(B) the maintenance and service applicable to the procurement item under the state contract with the maintenance and service applicable to the procurement item if the procurement item is obtained outside of the state contract;

(C) the warranties applicable to the procurement item under the state contract with the warranties applicable to the procurement item if the procurement item is obtained outside of the state contract;

(D) the quality of the procurement item under the state contract with the quality of the procurement item if the procurement item is obtained outside of the state contract; and

(E) the ~~[cost of the procurement item]~~ ability of the vendor under the state contract ~~[with the]~~ to match the quoted cost of the procurement item if the procurement item is obtained outside of the state contract;

(ii) for a procurement item that, if defective in its manufacture, installation, or performance, may result in serious physical injury, death, or substantial property damage,

determines in writing that the terms and conditions, relating to liability for injury, death, or property damage, available from the source other than the contractor who holds the state contract, are similar to, or better than, the terms and conditions available under the state contract; and

(iii) grants an exception, in writing, to the requirement described in Subsection (4).

(6) Except as otherwise expressly provided in this section, a procurement unit:

(a) may not use the small purchase standard procurement process described in this section for ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold; and

(b) shall make its ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold through a contract awarded through another standard procurement process described in this chapter or an applicable exception to another standard procurement process, described in Part 8, Exceptions to Procurement Requirements.

(7) This section does not prohibit regularly scheduled payments for a procurement item obtained under another provision of this chapter.

(8) (a) It is unlawful for a person knowingly to divide a single procurement into multiple smaller procurements, including by dividing an invoice or purchase order into multiple invoices or purchase orders, if:

(i) the single procurement would not have qualified as a small purchase under this section;

(ii) one or more of the multiple smaller procurements qualify as a small purchase under this section; and

(iii) the division is done with the intent to:

(A) avoid having to use a standard procurement process, other than the small purchase process, that the person would otherwise be required to use for the single procurement; or

(B) make one or more of the multiple smaller procurements fall below a small purchase expenditure threshold established by rule under Subsection (2)(b) that the single procurement would not have fallen below without the division.

(b) A violation of Subsection (8)(a) is subject to penalties as provided in Subsection 63G-6a-2404.3(2).

(9) The Division of Finance within the Department of Administrative Services may

conduct an audit of an executive branch procurement unit to verify compliance with the requirements of this section.

(10) An executive branch procurement unit may not make a small purchase after January 1, 2014, unless the chief procurement officer certifies that the person responsible for procurements in the procurement unit has satisfactorily completed training on this section and the rules made under this section.

Section 7. Section **63G-6a-507** is amended to read:

**63G-6a-507. Approved vendor list procurement process.**

(1) As used in this section:

(a) "Closed-ended approved vendor list" means an approved vendor list that is subject to:

(i) a short period of time, specified by the procurement unit, during which vendors may be added to the list; and

(ii) a specified period of time after which the list will expire.

(b) "Open-ended approved vendor list" means an approved vendor list that is subject to:

(i) an indeterminate period of time during which vendors may be added to the list;

(ii) the addition of vendors to the list throughout the term of the list; and

(iii) a specified period of time after which [a];

(A) the procurement unit is required to verify that vendors on the list continue to meet the minimum mandatory requirements, evaluation criteria, and applicable score thresholds; or

(B) each vendor on the list is required to submit the vendor's qualifications for evaluation before the vendor may be renewed as an approved vendor.

(2) A procurement unit may not establish an approved vendor list unless the procurement unit has first completed the statement of qualifications process described in Section **63G-6a-410**.

(3) (a) A procurement unit may establish an approved vendor list for:

(i) a specific, fully defined procurement item; or

(ii) a future procurement item that is not specifically and fully defined, if the request for statement of qualifications contains a general description of:

(A) the procurement item; and



989 (B) the type of vendor that the procurement unit seeks to provide the procurement item.

990 (b) A procurement unit may not award a contract to a vendor on an approved vendor  
991 list for a procurement item that is outside the scope of the general description of the  
992 procurement item contained in the request for statement of qualifications.

993 (4) After receiving the statements of qualifications and evaluation scores submitted by  
994 the evaluation committee under Subsection 63G-6a-410(9)(e), the head of the conducting  
995 procurement unit using the request for statement of qualifications process under Section  
996 63G-6a-410 as part of an approved vendor list process shall:

997 (a) include on an approved vendor list those vendors meeting the minimum mandatory  
998 requirements, evaluation criteria, and applicable score thresholds; and

999 (b) reject any vendor not meeting the minimum mandatory requirements, evaluation  
1000 criteria, and applicable score thresholds as ineligible for inclusion on the approved vendor list.

1001 (5) (a) A procurement unit shall include approved vendors on a closed-ended approved  
1002 vendor list or an open-ended approved vendor list.

1003 (b) (i) A closed-ended approved vendor list shall expire no later than 18 months after  
1004 the publication of the closed-ended approved vendor list.

1005 (ii) A procurement unit shall:

1006 (A) verify, no less frequently than every 18 months, by a method approved by the chief  
1007 procurement officer or head of the procurement unit with independent procurement authority,  
1008 that each vendor on an open-ended approved vendor list continues to meet the minimum  
1009 mandatory requirements, evaluation criteria, and applicable score thresholds; or

1010 (B) require a vendor on an open-ended approved vendor list, in order to remain on the  
1011 approved vendor list, to submit an updated statement of qualifications for evaluation no later  
1012 than 18 months after the vendor was added to the list as an approved vendor.

1013 (6) A procurement unit may:

1014 (a) (i) using a bidding process, request for proposals process, small purchase process,  
1015 or design professional procurement process, award a contract to a vendor on an approved  
1016 vendor list for any procurement item or type of procurement item specified by the procurement  
1017 unit in the request for statement of qualifications, including procurement items that the  
1018 procurement unit intends to acquire in a series of future procurements described in the request  
1019 for statement of qualifications; and

(ii) limit participation in a bidding process, request for proposals process, small purchase process, or design professional procurement process to vendors on an approved vendor list; or

(b) award a contract to a vendor on an approved vendor list at a price established as provided in Section 63G-6a-113.

(7) After establishing an approved vendor list as provided in this section, the conducting procurement unit shall, before using the approved vendor list, submit the approved vendor list to the issuing procurement unit for publication by the issuing procurement unit.

(8) A conducting procurement unit administering an open-ended approved vendor list shall:

(a) require a vendor seeking inclusion on the approved vendor list to submit a statement of qualifications that complies with all requirements applicable at the time of the initial request for statement of qualifications;

(b) if modifying the requirements for inclusion on the approved vendor list, apply any new or additional requirement to all vendors equally, whether a vendor is seeking inclusion on the approved vendor list for the first time or is already included on the approved vendor list; and

(c) keep the request for statement of qualifications posted on a website as required under Subsection 63G-6a-112(6).

(9) The applicable rulemaking authority shall make rules pertaining to an approved vendor list process, including:

(a) procedures to ensure that all vendors on an approved vendor list have a fair and equitable opportunity to compete for a contract for a procurement item; and

(b) requirements for using an approved vendor list with the small purchase process.

Section 8. Section 63G-6a-604 is amended to read:

**63G-6a-604. Bid opening and acceptance.**

~~[(1) Bids shall be opened:]~~

~~[(a) publicly, except as provided in Section 63G-6a-611;]~~

~~[(b) in the presence of one or more witnesses, unless an electronic bid opening process is used where bidders may see the opening of the bid electronically; and]~~

~~[(c) at the time and place indicated in the invitation for bids.]~~

1051 (1) (a) Bids shall be opened on the date and at the time and place specified in the  
1052 solicitation.

1053 (b) (i) Except as provided in Subsection (1)(b)(ii), bids shall be opened through an  
1054 electronic bid opening process.

1055 (ii) A procurement unit may open bids through a process other than an electronic bid  
1056 opening process if the opening is physically in the presence of one or more witnesses.

1057 (c) A procurement unit that opens bids through an electronic bid opening process shall:

1058 (i) make bid prices of electronically opened bids available for public inspection no later  
1059 than one day after the bid opening; and

1060 (ii) maintain records of the electronic bid opening:

1061 (A) electronically available for public inspection as provided in Part 20, Records; and

1062 (B) available for audit as provided in Section [63G-6a-1206.3](#).

1063 (2) Bids shall be accepted unconditionally, without alteration or correction, except as  
1064 otherwise authorized by this chapter.

1065 (3) (a) The procurement officer shall reject a bid if the bid is not responsive or the bid  
1066 is submitted by a bidder who is not responsible.

1067 (b) A bid that is not responsive includes a bid that:

1068 (i) is conditional;

1069 (ii) attempts to modify the bid requirements;

1070 (iii) contains additional terms or conditions; or

1071 (iv) fails to conform with the requirements or specifications of the invitation for bids.

1072 ~~[(c) A bid that is submitted by a bidder who is not responsible includes a bid where the~~  
1073 ~~procurement officer]~~

1074 (c) The chief procurement officer or the head of a procurement unit with independent  
1075 procurement authority may determine that a bidder who submitted a bid is not responsible if  
1076 the chief procurement officer or head reasonably concludes that the bidder or an employee,  
1077 agent, or subcontractor of the bidder, at any tier, is unable to satisfactorily fulfill the bid  
1078 requirements.

1079 (4) An issuing procurement unit may not accept a bid after the time for submission of a  
1080 bid has expired.

1081 (5) The procurement officer shall:

(a) record the name of each bidder and the amount of each bid; and  
(b) after the bid is awarded, make the information described in Subsection (5)(a) available for public disclosure.

Section 9. Section **63G-6a-707** is amended to read:

**63G-6a-707. Evaluation of proposals -- Evaluation committee.**

(1) (a) To determine which proposal provides the best value to the procurement unit, the evaluation committee shall evaluate each responsible offeror's responsive proposal that has not been disqualified from consideration under the provisions of this chapter, using the criteria described in the request for proposals.

(b) The criteria in a request for proposals may include:

- (i) experience;
- (ii) performance ratings;
- (iii) inspection;
- (iv) testing;
- (v) quality;
- (vi) workmanship;
- (vii) time, manner, or schedule of delivery;
- (viii) references;
- (ix) financial solvency;
- (x) suitability for a particular purpose;
- (xi) management plans;
- (xii) cost;
- (xiii) if applicable, the offeror's willingness and capability to enter into a public-private partnership; or
- (xiv) other subjective or objective criteria specified in the request for proposals.

(c) The criteria in a request for proposals for a construction project shall include the existence and quality of:

- (i) an offeror's company safety plan; and
  - (ii) the offeror's safety plan for the specific project that is the subject of the proposal.
- (2) Criteria not described in the request for proposals may not be used to evaluate a proposal.

1113 (3) (a) The conducting procurement unit shall:

1114 ~~[(a)]~~ (i) appoint an evaluation committee consisting, subject to Subsection (3)(b), of at

1115 least three individuals with at least a general familiarity with or basic understanding of:

1116 ~~[(i)]~~ (A) the technical requirements relating to the type of procurement item that is the

1117 subject of the procurement; or

1118 ~~[(ii)]~~ (B) the need that the procurement item is intended to address; and

1119 ~~[(b)]~~ (ii) ensure that the evaluation committee and each individual participating in the

1120 evaluation committee process:

1121 ~~[(i)]~~ (A) does not have a conflict of interest with any of the offerors;

1122 ~~[(ii)]~~ (B) can fairly evaluate each proposal;

1123 ~~[(iii)]~~ (C) does not contact or communicate with an offeror concerning the procurement

1124 outside the official evaluation committee process; and

1125 ~~[(iv)]~~ (D) conducts or participates in the evaluation in a manner that ensures a fair and

1126 competitive process and avoids the appearance of impropriety.

1127 (b) The conducting procurement unit may reduce the number of individuals appointed

1128 to an evaluation committee if the chief procurement officer or the head of the procurement unit

1129 with independent procurement authority determines in writing that the evaluation criteria:

1130 (i) consist of only objective criteria; and

1131 (ii) do not include any subjective criterion that requires analysis, assessment, or

1132 deliberation.

1133 (4) A conducting procurement unit may authorize an evaluation committee to receive

1134 assistance:

1135 (a) from an expert or consultant who:

1136 (i) is not a member of the evaluation committee; and

1137 (ii) does not participate in the evaluation scoring; and

1138 (b) to better understand a technical issue involved in the procurement.

1139 (5) (a) An evaluation committee may, with the approval of the head of the conducting

1140 procurement unit, enter into discussions or conduct interviews with, or attend presentations by,

1141 the offerors, for the purpose of clarifying information contained in proposals.

1142 (b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:

1143 (i) may only explain, illustrate, or interpret the contents of the offeror's original

1144 proposal; and  
1145 (ii) may not:  
1146 (A) address criteria or specifications not contained in the offeror's original proposal;  
1147 (B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial  
1148 error;  
1149 (C) correct an incomplete submission of documents that the solicitation required to be  
1150 submitted with the proposal;  
1151 (D) correct a failure to submit a timely proposal;  
1152 (E) substitute or alter a required form or other document specified in the solicitation;  
1153 (F) remedy a cause for an offeror being considered to be not responsible or a proposal  
1154 not responsive; or  
1155 (G) correct a defect or inadequacy resulting in a determination that an offeror does not  
1156 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds  
1157 established in the solicitation.  
1158 (6) (a) Except as provided in Subsection (7)(b) relating to access to management fee  
1159 information, and except as provided in Subsection (9), each member of the evaluation  
1160 committee is prohibited from knowing, or having access to, any information relating to the  
1161 cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its  
1162 final recommended scores on all other criteria to the issuing procurement unit.  
1163 (b) The issuing procurement unit shall:  
1164 (i) if applicable, assign an individual who is not a member of the evaluation committee  
1165 to calculate scores for cost based on the applicable scoring formula, weighting, and other  
1166 scoring procedures contained in the request for proposals;  
1167 (ii) review the evaluation committee's scores and correct any errors, scoring  
1168 inconsistencies, and reported noncompliance with this chapter;  
1169 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final  
1170 recommended scores on criteria other than cost to derive the total combined score for each  
1171 responsive proposal from a responsible offeror; and  
1172 (iv) provide to the evaluation committee the total combined score calculated for each  
1173 responsive proposal from a responsible offeror, including any applicable cost formula,  
1174 weighting, and scoring procedures used to calculate the total combined scores.

- 1175 (c) The evaluation committee may not:
- 1176 (i) change its final recommended scores described in Subsection (6)(a) after the
- 1177 evaluation committee has submitted those scores to the issuing procurement unit; or
- 1178 (ii) change cost scores calculated by the issuing procurement unit.
- 1179 (7) (a) As used in this Subsection (7), "management fee" includes only the following
- 1180 fees of the construction manager/general contractor:
- 1181 (i) preconstruction phase services;
- 1182 (ii) monthly supervision fees for the construction phase; and
- 1183 (iii) overhead and profit for the construction phase.
- 1184 (b) When selecting a construction manager/general contractor for a construction
- 1185 project, the evaluation committee:
- 1186 (i) may score a construction manager/general contractor based upon criteria contained
- 1187 in the solicitation, including qualifications, performance ratings, references, management plan,
- 1188 certifications, and other project specific criteria described in the solicitation;
- 1189 (ii) may, as described in the solicitation, weight and score the management fee as a
- 1190 fixed rate or as a fixed percentage of the estimated contract value;
- 1191 (iii) may, at any time after the opening of the responses to the request for proposals,
- 1192 have access to, and consider, the management fee proposed by the offerors; and
- 1193 (iv) except as provided in Subsection (9), may not know or have access to any other
- 1194 information relating to the cost of construction submitted by the offerors, until after the
- 1195 evaluation committee submits its final recommended scores on all other criteria to the issuing
- 1196 procurement unit.
- 1197 (8) (a) The deliberations of an evaluation committee may be held in private.
- 1198 (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the
- 1199 evaluation committee shall comply with Section 52-4-205 in closing a meeting for its
- 1200 deliberations.
- 1201 (9) An issuing procurement unit is not required to comply with Subsection (6) or
- 1202 (7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by
- 1203 rule made by the applicable rulemaking authority:
- 1204 (a) signs a written statement:
- 1205 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the

best interest of the procurement unit to waive compliance with Subsection (6) or (7)(b)(iv), as the case may be; and

(ii) describing the nature of the proposal and the other circumstances relied upon to waive compliance with Subsection (6) or (7)(b)(iv); and

(b) makes the written statement available to the public, upon request.

Section 10. Section **63G-6a-708** is amended to read:

**63G-6a-708. Justification statement.**

(1) ~~[(a) In]~~ After determining which proposal provides the best value to the procurement unit, the evaluation committee ~~[and the conducting procurement unit]~~ shall:

(a) recommend to the procurement unit the proposal with the highest total combined score; and

(b) prepare a written justification statement about the proposal with the highest total combined score that:

(i) explains the score assigned ~~[to]~~ for each evaluation category; and

(ii) explains how the proposal ~~[with the highest total combined score]~~ provides the best value to the procurement unit in comparison to the other proposals~~[:]~~.

~~[(iii) if applicable, includes the cost-benefit analysis described in Subsection (2) and how the cost-benefit analysis relates to the best value to the procurement unit; and]~~

~~[(iv) if applicable, includes the written determination described in Subsection (5).]~~

~~[(b)]~~ (2) An explanation under Subsection (1)~~[(a)]~~(b)(i) need not address each criterion within each category.

~~[(2) If, in determining the best value to the procurement unit, the evaluation committee awards the highest score, including the score for cost, to a proposal other than the lowest cost proposal, and the difference between the cost of the highest scored proposal and the lowest cost proposal exceeds the greater of \$10,000 or 5% of the lowest cost proposal, the evaluation committee and the conducting procurement unit shall prepare an informal written cost-benefit analysis that:]~~

~~[(a) explains, in general terms, the advantage to the procurement unit of awarding the contract to the higher cost offeror; and]~~

~~[(b) except as provided in Subsection (5).]~~

~~[(i) includes the estimated added financial value to the procurement unit of each~~



1237 ~~criterion that justifies awarding the contract to the higher cost offeror; and]~~

1238 ~~[(ii) demonstrates that the value of the advantage to the procurement unit of awarding~~  
1239 ~~the contract to the higher cost offeror exceeds the value of the difference between the cost of~~  
1240 ~~the higher cost proposal and the cost of the lower cost proposals.]~~

1241 ~~[(3) If the informal cost-benefit analysis described in Subsection (2) does not justify~~  
1242 ~~awarding the contract to the offeror that received the highest score, the issuing procurement~~  
1243 ~~unit:]~~

1244 ~~[(a) may not award the contract to the offeror that received the highest score; and]~~

1245 ~~[(b) may award the contract to the offeror that received the next highest score, unless:]~~

1246 ~~[(i) an informal cost-benefit analysis is required, because the difference between the~~  
1247 ~~cost proposed by the offeror that received the next highest score and the lowest cost proposal~~  
1248 ~~exceeds the greater of \$10,000 or 5% of the lowest cost proposal; and]~~

1249 ~~[(ii) the informal cost-benefit analysis does not justify award of the contract to the~~  
1250 ~~offeror that received the next highest score:]~~

1251 ~~[(4) If the informal cost-benefit analysis described in Subsection (2) does not justify~~  
1252 ~~award of the contract to the offeror, described in Subsection (3), that received the next highest~~  
1253 ~~score, the issuing procurement unit:]~~

1254 ~~[(a) may not award the contract to the offeror that received the next highest score; and]~~

1255 ~~[(b) shall continue with the process described in Subsection (3) for each offeror that~~  
1256 ~~received the next highest score, until the issuing procurement unit:]~~

1257 ~~[(i) awards the contract in accordance with the provisions of this section; or]~~

1258 ~~[(ii) cancels the request for proposals:]~~

1259 ~~[(5) (a) The evaluation committee, with the issuing procurement unit's approval, may~~  
1260 ~~waive, in whole or in part, a requirement under Subsection (2)(b) if the evaluation committee~~  
1261 ~~determines in writing that assigning a financial value to a particular procurement item or~~  
1262 ~~evaluation criterion is not practicable:]~~

1263 ~~[(b) A written determination under Subsection (5)(a):]~~

1264 ~~[(i) shall explain:]~~

1265 ~~[(A) why it is not practicable to assign a financial value to the procurement item or~~  
1266 ~~evaluation criterion; and]~~

1267 ~~[(B) in nonfinancial terms, why awarding the contract to the higher cost offeror~~

provides the best value to the procurement unit; and]

[~~(ii) may be included as part of the justification statement.~~]

~~[(6) (a) An issuing procurement unit is not required to make the cost-benefit analysis described in this section for a contract with a construction manager/general contractor if the contract is awarded based solely on the qualifications of the construction manager/general contractor and the management fee described in Subsection [63G-6a-707](#)(7).]~~

~~[(b) The applicable rulemaking authority shall make rules that establish procedures and criteria for awarding a contract described in Subsection (6)(a) to ensure that:]~~

~~[(i) a competitive process is maintained; and]~~

~~[(ii) the contract awarded is in the best interest of the procurement unit.]~~

Section 11. Section [63G-6a-708.5](#) is enacted to read:

**63G-6a-708.5. Cost-benefit analysis.**

(1) Except as provided in Subsection (5), the evaluation committee shall prepare an informal, written cost-benefit analysis if:

(a) the proposal that the evaluation committee recommends under Section [63G-6a-708](#) is not the proposal with the lowest cost; and

(b) the difference between the cost of the recommended proposal and the cost of the proposal with the lowest cost exceeds:

(i) \$10,000; and

(ii) 5% of the cost of the proposal with the lowest cost.

(2) In a cost-benefit analysis under Subsection (1), the evaluation committee shall, for each evaluation category identified in the solicitation:

(a) explain in general terms the advantage to the procurement unit of the recommended proposal over the proposal with the lowest cost; and

(b) except as provided in Subsection (4):

(i) estimate the added financial value to the procurement unit of the recommended proposal over the proposal with the lowest cost; and

(ii) demonstrate that the estimated added financial value exceeds the difference between the cost of the recommended proposal and the cost of the proposal with the lowest cost.

(3) (a) If a cost-benefit analysis under this section does not demonstrate that the

estimated added financial value of the recommended proposal exceeds the difference between the cost of the recommended proposal and the cost of the proposal with the lowest cost, the procurement unit:

(i) may not award a contract to the offeror that submitted the recommended proposal;  
and

(ii) shall:

(A) cancel the solicitation; or

(B) direct the evaluation committee to prepare a justification statement and, if applicable, a cost-benefit analysis for the proposal that received the next highest score.

(b) Unless the solicitation is canceled under Subsection (3)(a)(ii)(A), the evaluation committee may repeat the process described in Subsection (3)(a) until the procurement unit:

(i) cancels the solicitation; or

(ii) awards a contract to the offeror that submitted the proposal recommended by the evaluation committee under the repeated process.

(4) The chief procurement officer or the head of a procurement unit with independent procurement authority may waive, in whole or in part, a requirement under Subsection (2)(b) if the chief procurement officer or head of the procurement unit with independent procurement authority:

(a) makes a written determination, before cost proposals are opened, that estimating the added financial value to the procurement unit of the recommended proposal over the proposal with the lowest cost is not practicable; and

(b) provides the written determination to the evaluation committee.

(5) (a) An evaluation committee is not required to make a cost-benefit analysis described in this section for a proposal submitted by a construction manager/general contractor if the proposal is recommended based solely on the qualifications of the construction manager/general contractor and the management fee described in Subsection [63G-6a-707](#)(7).

(b) The applicable rulemaking authority shall make rules that establish procedures and criteria for awarding a contract described in Subsection (5)(a) to ensure that:

(i) a competitive process is maintained; and

(ii) the contract awarded is in the best interest of the procurement unit.

Section 12. Section **63G-6a-802** is amended to read:

**63G-6a-802. Award of contract without engaging in a standard procurement process -- Notice -- Duty to negotiate contract terms in best interest of procurement unit.**

(1) The chief procurement officer or the head of a procurement unit with independent procurement authority may award a contract for a procurement item without engaging in a standard procurement process if the chief procurement officer or the head of the procurement unit with independent procurement authority determines in writing that:

(a) there is only one source for the procurement item;

(b) (i) transitional costs are a significant consideration in selecting a procurement item; and

(ii) the results of a cost-benefit analysis demonstrate that transitional costs are unreasonable or cost-prohibitive, and that the award of a contract without engaging in a standard procurement process is in the best interest of the procurement unit; or

(c) the award of a contract is under circumstances, described in rules adopted by the applicable rulemaking authority, that make awarding the contract through a standard procurement process impractical and not in the best interest of the procurement unit.

(2) Transitional costs associated with a trial use or testing of a procurement item under a trial use contract under Section 63G-6a-802.3 may not be included in a consideration of transitional costs under Subsection (1)(b).

(3) (a) Subject to Subsection (3)(b), the applicable rulemaking authority shall make rules regarding the publication of notice for a procurement under this section that, at a minimum, require publication of notice of the procurement, in accordance with Section 63G-6a-112, if the cost of the procurement exceeds \$50,000.

(b) Publication of notice under Section 63G-6a-112 is not required for:

(i) the procurement of public utility services pursuant to a sole source contract; or

(ii) other procurements under this section for which an applicable rule provides that notice is not required.

(4) The chief procurement officer or the head of a procurement unit with independent procurement authority who awards a contract under this section shall negotiate with the contractor to ensure that the terms of the contract, including price and delivery, are in the best interest of the procurement unit.

Section 13. Section 63G-6a-802.3 is amended to read:

**63G-6a-802.3. Trial use contracts.**

(1) A procurement unit may award a short-term trial use contract without engaging in a standard procurement process if:

(a) the purpose of the contract is to:

(i) determine whether the procurement item will benefit the procurement unit;

(ii) assess the feasibility of a procurement item that:

(A) is new or innovative; or

(B) has a proposed use or application that is novel or unproven; or

(iii) evaluate whether to conduct a standard procurement process for the procurement item being tested; and

(b) the contract is:

(i) awarded for a procurement item that is not already available to the procurement unit under an existing contract;

(ii) restricted to the procurement of a procurement item in the minimum quantity and for the minimum period of time necessary to test the procurement item;

(iii) the only trial use contract for that procurement unit for the same procurement item; and

(iv) not used to circumvent the purposes and policies of this chapter as set forth in Section 63G-6a-102.

(2) The period of trial use or testing of a procurement item under a trial use contract may not exceed 18 months, unless the procurement officer provides a written exception documenting the reason for a longer period.

(3) A trial use contract shall:

(a) state that the contract is strictly for the trial use or testing of a procurement item;

(b) state that the contract terminates upon completion of the trial use or testing period;

(c) state that the procurement unit is not obligated to purchase or enter into a contract for the procurement item, regardless of the trial use or testing result;

(d) state that any purchase of the procurement item that is the subject of the trial use contract will be made in accordance with this chapter; and

(e) include, as applicable:

(i) test schedules;

1392 (ii) deadlines and a termination date;  
1393 (iii) measures that will be used to evaluate the performance of the procurement item;  
1394 (iv) any fees and associated expenses or an explanation of the circumstances  
1395 warranting a waiver of those fees and expenses;  
1396 (v) the obligations of the procurement unit and vendor;  
1397 (vi) provisions regarding the ownership of the procurement item during and after the  
1398 trial use or testing period;  
1399 (vii) an explanation of the grounds upon which the contract may be terminated;  
1400 (viii) a provision relating to any required bond or security deposit; and  
1401 (ix) other requirements unique to the procurement item for trial use or testing.  
1402 (4) Publication of notice under Section 63G-6a-112 is not required for a trial use  
1403 contract.

1404 (5) The applicable rulemaking authority may make rules pertaining to a trial use  
1405 contract.

1406 Section 14. Section 63G-6a-804 is amended to read:

1407 **63G-6a-804. Purchase of prison industry goods.**

1408 (1) As used in this section:

1409 (a) "Correctional industries division" means the Division of Correctional Industries,  
1410 created in Section 64-13a-4.

1411 (b) "Correctional industries director" means the director of the correctional industries  
1412 division, appointed under Section 64-13a-4.

1413 ~~[(1)]~~ (2) (a) A procurement unit that is not a political subdivision shall purchase goods  
1414 and services produced by the ~~[Utah Correctional Industries Division]~~ correctional industries  
1415 division as provided in this section.

1416 (b) A political subdivision of the state may, and is encouraged to, purchase goods and  
1417 services under this section.

1418 (c) A procurement unit is not required to use a standard procurement process to  
1419 purchase goods or services under this section.

1420 ~~[(2)]~~ (3) On or before July 1 of each year, the correctional industries director ~~[of the~~  
1421 ~~Utah Correctional Industries]~~ shall:

1422 (a) publish and distribute to all procurement units and other interested public entities a

catalog of goods and services provided by the [~~Correctional Industries Division~~] correctional industries division, including a description and price of each item offered for sale; and

(b) update and revise the catalog described in Subsection [~~(2)~~] (3)(a) during the year as the correctional industries director considers necessary.

[~~(3)~~] (4) (a) A procurement unit that is not a political subdivision of the state may not purchase any goods or services provided by the [~~Correctional Industries Division~~] correctional industries division from any other source unless [~~it has been determined in writing by the director of Correctional Industries and by the~~] the correctional industries director and the chief procurement officer or, in the case of institutions of higher education, the institutional procurement officer, determine in writing that purchase from the [~~Correctional Industries Division~~] correctional industries division is not feasible due to one of the following circumstances:

(i) the good or service offered by the correctional industries division does not meet the reasonable requirements of the procurement unit;

(ii) the good or service cannot be supplied within a reasonable time by the correctional industries division; or

(iii) the cost of the good or service, including basic price, transportation costs, and other expenses of acquisition, is not competitive with the cost of procuring the item from another source.

(b) In cases of disagreement under Subsection [~~(3)~~] (4)(a):

(i) the decision may be appealed to a board consisting of:

(A) the director of the Department of Corrections;

(B) the director of Administrative Services; and

(C) a neutral third party agreed upon by the other two members of the board;

(ii) in the case of an institution of higher education of the state, the president of the institution, or the president's designee, shall make the final decision; or

(iii) in the case of any of the following entities, a person designated by the applicable rulemaking authority shall make the final decision:

(A) a legislative procurement unit;

(B) a judicial procurement unit; or

(C) a public transit district.

1454 Section 15. Section **63G-6a-2002** is amended to read:

1455 **63G-6a-2002. Records -- Retention.**

1456 (1) All procurement records shall be retained and disposed of in accordance with Title  
1457 63G, Chapter 2, Government Records Access and Management Act.

1458 (2) Written determinations required by this chapter shall be retained in the appropriate  
1459 official contract file of:

1460 (a) the division;

1461 (b) the procurement unit with independent procurement authority; or

1462 (c) for a legislative procurement unit or a judicial procurement unit, the person  
1463 designated by rule made by the applicable rulemaking authority.

1464 (3) A procurement unit shall keep, and make available to the public, upon request,  
1465 written records of procurements for which an expenditure of [~~\$50~~] \$100 or more is made, for  
1466 the longer of:

1467 (a) six years;

1468 (b) the time otherwise required by law; or

1469 (c) the time period provided by rule made by the applicable rulemaking authority.

1470 (4) The written record described in Subsection (3) shall include:

1471 (a) the name of the provider from whom the procurement was made;

1472 (b) a description of the procurement item;

1473 (c) the date of the procurement; and

1474 (d) the expenditure made for the procurement.

1475 Section 16. Section **63G-6a-2102** is amended to read:

1476 **63G-6a-2102. Agreements between public entities.**

1477 A [~~procurement unit~~] public entity may enter into an agreement with one or more other  
1478 [~~procurement units~~] public entities to:

1479 (1) sponsor, conduct, or administer a cooperative agreement for:

1480 (a) the procurement of a procurement item, in accordance with the requirements of

1481 Section **63G-6a-2105**; or

1482 (b) the disposal of a procurement item;

1483 (2) cooperatively use a procurement item;

1484 (3) commonly use or share warehousing facilities, capital equipment, and other



1485 facilities;

1486 (4) provide personnel, if the receiving [~~procurement unit~~] public entity pays the  
1487 [~~procurement unit~~] public entity providing the personnel the direct and indirect cost of  
1488 providing the personnel, in accordance with the agreement; or

1489 [~~(5) make available informational, technical, and other services, if:~~]

1490 [~~(a) the requirements of the procurement unit tendering the services have precedence~~  
1491 ~~over the procurement unit that receives the services; and]~~

1492 [~~(b) the receiving procurement unit pays the expenses of the services provided, in~~  
1493 ~~accordance with the agreement.]~~

1494 (5) purchase from, contribute to, or otherwise participate in a pooled governmental  
1495 funds program for the purpose of acquiring or sharing information, data, reports, and other  
1496 services in accordance with the terms of the agreement.

1497 Section 17. Section **63G-6a-2103** is amended to read:

1498 **63G-6a-2103. Purchases between public entities.**

1499 (1) (a) [~~A procurement unit may, without using a standard procurement process,~~  
1500 ~~purchase from another procurement unit]~~ A public entity may purchase from another public  
1501 entity a procurement item that the other [~~procurement unit~~] public entity itself produces or  
1502 provides.

1503 (b) A purchase under Subsection (1)(a) is not subject to the procurement requirements  
1504 of this chapter.

1505 [~~(b)~~] (c) (i) Subsection (1)(a) does not authorize a [~~procurement unit~~] public entity to  
1506 obtain a procurement item under a contract of another [~~procurement unit~~] public entity.

1507 (ii) Subsection (1)[~~(b)~~](c)(i) does not affect the authority of a [~~procurement unit~~] public  
1508 entity relating to a cooperative procurement under Subsection **63G-6a-2105**(4)(b).

1509 (2) A [~~procurement unit~~] public entity may publish a schedule of costs or fees for  
1510 procurement items available for purchase by another [~~procurement unit~~] public entity.

1511 Section 18. Section **72-1-202** is amended to read:

1512 **72-1-202. Executive director of department -- Appointment -- Qualifications --**  
1513 **Term -- Responsibility -- Power to bring suits -- Salary.**

1514 (1) (a) The governor, after consultation with the commission and with the consent of  
1515 the Senate, shall appoint an executive director to be the chief executive officer of the

1516 department.

1517 (b) The executive director shall be a qualified executive with technical and  
1518 administrative experience and training appropriate for the position.

1519 (c) The executive director shall remain in office until a successor is appointed.

1520 (d) The executive director may be removed by the governor.

1521 (2) In addition to the other functions, powers, duties, rights, and responsibilities  
1522 prescribed in this chapter, the executive director shall:

1523 (a) have responsibility for the administrative supervision of the state transportation  
1524 systems and the various operations of the department;

1525 (b) have the responsibility for the implementation of rules, priorities, and policies  
1526 established by the department and the commission;

1527 (c) have full power to bring suit in courts of competent jurisdiction in the name of the  
1528 department as the executive director considers reasonable and necessary for the proper  
1529 attainment of the goals of this chapter;

1530 (d) receive a salary, to be established by the governor within the salary range fixed by  
1531 the Legislature in Title 67, Chapter 22, State Officer Compensation, together with actual  
1532 traveling expenses while away from the executive director's office on official business; and

1533 (e) purchase all necessary equipment, services, and supplies for the department to  
1534 fulfill its responsibilities under Subsection [72-1-201](#)(1).

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**